

DOCKET NO.: NHH-CV23-6018286-S : SUPERIOR COURT
CHAPEL APARTMENTS, LLC : HOUSING SESSION
VS. : AT NEW HAVEN
JEAN-CLAUDE, SANDRA ET AL : FEBRUARY 6, 2023

MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO DISMISS

The Plaintiff hereby files this memorandum of law in opposition to the Defendant's Motion to Dismiss, dated JANUARY 20, 2023.

ARGUMENT

1. **THE COURT HAS SUBJECT MATTER JURISDICTION OVER THE DEFENDANT AS THE NOTICE TO QUIT AND SUMMONS AND COMPLAINT WERE PROPERLY SERVED BY ABODE SERVICE.**

Conn. Gen. Stat. §52-57(a) provides that “process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state.” The relevant inquiry is whether process was left at the usual place of abode of the defendant in such a place and manner that is reasonably probable that the defendant will receive notice of the action against her. *Fine Homebuilders, Inc. v. Perrone*, *supra*, 98 Conn.App. at 857. Further, the defendant actually receiving notice weighs in favor of the court finding that service was conducted properly. *Gondek v. Haugwitz-Reventlow*, No. 38 78 52, 1991 WL 112880, at *1 (Conn. Super. Ct. June 18, 1991) In this case, the manner of service—wedged between the door post and the door handle—was such that is was reasonably probable that the defendant will receive notice. Further, the Defendant does not contest that notice was received, weighing in favor of the court finding that this method of abode service is appropriate.

A. ABODE SERVICE WAS PROPERLY EFFECTUATED BECAUSE IT WAS
REASONABLY PROBABLE FROM THE MANNER OF SERVICE THAT THE
DEFENDANT WILL RECEIVE NOTICE OF THE ACTION AGAINST HIM.

Conn. Gen. Stat. §52-57(a) provides that “process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state.” In order to effectuate abode service, “[t]he process must be left at the usual place of abode of the defendant in such a place and in such a manner that **is reasonably probable the defendant will receive the notice of the action against him.**” *Pozzi v. Harney*, 24 Conn.Supp. 488, 491, 194 A.2d 714 (1963). Whether process was left in a manner that it is reasonably probable that the defendant will receive notice is a fact-based question. See *Laurel Estates v. Melissa Moore*, 1984 WL 255914 (Super. Ct., J.D. of Waterbury, Housing Session, April 5, 1984.) See also *Fine Homebuilders, Inc. v. Perrone*, 98 Conn. App. 852, 861–62, 911 A.2d 1149, 1154 (2006). The controlling case in the state of Connecticut, which the defense counsel has failed to cite in their brief, is *Fine Homebuilders, Inc. v. Perrone*. In *Fine Home Builders, Inc v. Perrone*, the court held that abode service was properly made when the marshal affixed the process to the main entryway to the property- a gate more 200 feet from the home of the defendants. *Fine Homebuilders, Inc. v. Perrone*, 98 Conn. App. 852, 857, 911 A.2d 1149, 1152 (2006) In that case, the court reasoned that because the front door was inaccessible, the marshal affixed the process to the main entryway to the property, and the defendant’s received notice of the action, service of process effected by the marshal was reasonably likely to achieve personal notice. *Fine Homebuilders, Inc. v. Perrone*, 98 Conn. App. 852, 861–62, 911 A.2d 1149, 1154 (2006).

The defense counsel cites various cases that give examples of adequate abode service, however nothing in these cases indicate that their methods of service are the exclusive and only valid methods of abode service. Further, these cases predate *Fine Homebuilders, Inc. v. Perrone* and, as a result, **“the bright line rule articulated in [the defendant’s cases] that abode service requires at least partial placement of process within a defendant's dwelling is no longer persuasive.”** *Irby v. Yagovane*, No. CV116023362, 2012 WL 1871245, at *4 (Conn. Super. Ct. May 2, 2012).

In *Greene, et al v. Lindsey, et al*, the court considered, in analyzing whether abode service was proper, the Defendant’s evidence that, *in that particular building*, “such posted writs were not infrequently removed by third parties, such as other tenants, children, or strangers.” *Laurel Estates v. Melissa Moore*, 1984 WL 255914 (Super. Ct., J.D. of Waterbury, Housing Session, April 5, 1984.) citing *Greene, et al v. Lindsey, et al* 456 US 444, 102 S.Ct. 1874 L.E.d2nd 249 (1982). In determining that abode service was properly effectuated, the court in *Irby v. Yagovane* considered that “defendant has presented no evidence that suggests that process was misdirected or destroyed as a result of the documents being left in the hands of a relative.” *Irby v. Yagovane*, No. CV116023362, 2012 WL 1871245, at *3 (Conn. Super. Ct. May 2, 2012)

In this case, the marshal affixed the notice to quit and summons and complaint to the defendant’s own door handle, in between the door handle and the door post, where the occupants were most likely to come across it. Had he slid it under the door, the papers could have slid out of sight. The writ summons and complaint would most likely have been stepped on, crumpled, and possibly gone unnoticed by the occupants or thrown away as unfamiliar trash on the floor. There is no alleged history in this building of papers being stolen or tampered with. Sliding the papers under the front door would have borne the same risk, if not a higher risk, as affixing them

to the front door. Under these circumstances, it was reasonably probable that the occupants of this apartment will receive notice when said notice is affixed to the door handle, in between the door handle and the door post, as abode service was effectuated in this case. Therefore, the court has subject matter jurisdiction.

B. RECIEPT OF ACTUAL NOTICE OF THE ACTION WEIGHS IN FAVOR OF FINDING THAT SERVICE WAS PROPERLY EFFECTUATED.

“The chief purpose of the statutory requirement that service of civil process be made at the defendant's usual place of abode is to ensure actual notice to the defendant that the action is pending.” *Gondek v. Haugwitz-Reventlow*, No. 38 78 52, 1991 WL 112880, at *1 (Conn. Super. Ct. June 18, 1991) citing *Uyen Phan*, 41 Conn.Sup. at 369; *Clover v. Urban*, 108 Conn. 13, 16 (1928); *Clegg v. Bishop*, 105 Conn. 564, 569 (1926). Thus, where the defendant has received actual notice of the action against him, the statutory provisions for substituted service should be liberally construed by the court *Fine Homebuilders, Inc. v. Perrone*, 98 Conn. App. 852, 861, 911 A.2d 1149, 1154 (2006) Citing *Krom v. Krom*, judicial district of Hartford, Docket No. FA97–0714850, 2003 WL 352938 (January 6, 2003). Actual notice “weighs heavily in favor of the plaintiff; the defendant cannot be heard to say that he was prejudiced in any manner whatsoever,” *Gondek v. Haugwitz-Reventlow*, No. 38 78 52, 1991 WL 112880, at *1 (Conn. Super. Ct. June 18, 1991) citing *Plonski*, 36 Conn.Sup. at 337. The court has held that “it is significant, though not conclusive, that the defendants actually did receive the process, thereby accomplishing the purpose of abode service.” *Fine Homebuilders, Inc. v. Perrone*, 98 Conn. App. 852, 861, 911 A.2d 1149, 1154 (2006) Citing *Krom v. Krom*, judicial district of Hartford, Docket No. FA97–0714850, 2003 WL 352938 (January 6, 2003). In determining that abode

service was properly effectuated, the court in *Irby v. Yagovane* considered that “counsel or the defendant represented during oral argument that the defendant, did, in fact, timely receive service of process.” *Irby v. Yagovane*, No. CV116023362, 2012 WL 1871245, at *3 (Conn. Super. Ct. May 2, 2012). Here, the Defendant’s motion to dismiss contains an affidavit from the Defendant herself asserting that both named Defendants received the writ summons and complaint the day they were served, when they came home from work.

For the reasons stated above, the Plaintiff prays that the motion to dismiss be denied.

The Plaintiff

By



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ORDER

THE OBJECTION TO THE MOTION TO OPEN IS HEREBY ORDERED:

SUSTAINED / OVERRULED

J.

DATE

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed on **February 6, 2023** to all appearing parties at the following address(es):

Amy Eppler-Epstein

205 ORANGE STREET

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ELIANA R SCHACHTER, ESQ

Commissioner of the Superior Court